

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 1, 2005

To: The Commission
(Meeting of April 7, 2005)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1704 (Richman) Electricity: electrical restructuring: core, noncore, and core-elect electrical market structure**
As Introduced February 22, 2005

Legislative Subcommittee Recommendation: Support

SUMMARY: This bill would eliminate (as of March 15, 2007) the current suspension of direct access. It would allow direct access to resume on that date under a Core/Non-Core market structure. To implement this market structure, the legislation also addresses resource adequacy requirements, switching rules between bundled service and direct access, stranded cost recovery, and utility procurement practices.

DIGEST: Existing law (the Public Utilities Act) requires the commission pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law (Water Code Section 80110) also suspends the right of retail end-use customers, other than community choice aggregators, as defined, to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would require the Commission to adopt rules meeting specified requirements, to transition to a core/noncore electrical market structure. Under the core/noncore market structure, an electrical corporation would have a duty to provide core customers and core-elect customers, as defined, with electricity, transmission service, distribution service, and auxiliary services, including metering, billing, and public service notifications (bundled service), and would have a duty to provide noncore customers, aggregated noncore customers, grandfathered direct access customers, and green-choice customers, as defined, with transmission service and distribution service on a nondiscriminatory basis. Every noncore, aggregated noncore, grandfathered direct access, and green-choice customer that enters into a direct transaction would be

responsible for procuring electricity sufficient to meet its needs and a standardized reserve margin established by the Commission in consultation with the Energy Commission and the CA ISO. This bill would delete the requirement that direct transactions be suspended until the Department of Water Resources no longer supplies electricity through power purchase contracts, and would instead authorize noncore, aggregated noncore, and green-choice customers to enter into direct transactions pursuant to the core/noncore electrical market structure. The bill would make other conforming changes.

Existing law (the Public Utilities Act) requires the Commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, including the requirement that the procurement plan enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

This bill would instead require that the procurement plan approved by the commission enable the electrical corporation to fulfill its obligation to serve its core customers and core-elect customers, at just and reasonable rates, while minimizing the risk of stranded electricity procurement costs that could result from customers electing to enter into direct transactions pursuant to the core/noncore electrical market structure.

Existing law states the intent of the Legislature that each retail end-use customer that has purchased electricity from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of January 1, 2003, that are recoverable from electrical corporation customers in commission-approved rates. Existing law states the further intent of the Legislature to prevent any shifting of recoverable costs between customers.

This bill would provide that noncore, aggregated noncore, and green-choice customers are responsible for a fair share of the cost of contracts entered into by the Department of Water Resources and that when a noncore, aggregated noncore, or green-choice customer receives electricity through a direct transaction that is assessed a cost responsibility surcharge that includes ongoing expenses for electricity purchased under long-term contracts entered into by the Department of Water Resources, the customer is entitled to receive the electricity the customer is paying for, or the customer or the customer's electric service provider may apply the electricity to a reserve margin for the customer's load.

Existing law, in implementation of electrical restructuring, requires that the governing board of a local publicly owned electric utility, as defined, determine whether the utility will authorize direct transactions between electricity suppliers and end-use customers.

This bill would require that when a local publicly owned electric utility expands service into a geographical service area of an electrical corporation, any noncore, aggregated noncore, green-choice, or grandfathered direct access customer within that service area receiving electricity through a direct transaction has the right to engage in direct transactions.

DIVISION ANALYSIS (DSP):

Eliminates the Suspension of Direct Access

Water Code Section 80110 suspends the reinstatement of direct access (except for pre-existing direct access customers who were grandfathered) until DWR no longer is procuring power. The last DWR contracts will not expire until the 2011 to 2013 time frame. AB1704 would lift this suspension and allow direct access, under a Core/Noncore market structure, to go into effect on March 15, 2007.

Creates a Core/Noncore Market Structure

AB1704 would establish six different groups of customers. For convenience sake, these are grouped into a **NONCORE GROUP** and a **CORE GROUP**,

The **Noncore group** would consist of:

- **Noncore customers:** Defined as those customers with a maximum demand above 200 kW. Customers would be allowed to combine load from multiple meters on the same site to meet the 200 kW threshold.
- **Aggregated non-core customers:** This classification would allow for;
 - The aggregation of a number of sites under common ownership to reach the 200 kW threshold (i.e. McDonald's, 7-11s, etc.); as well as,
 - The aggregation of "customer of a common type that is separately owned, with multiple locations within the service area of a single electrical corporation, that has a common agent for the procurement of electricity." This definition would allow aggregation by groups such as the California Restaurant Association (CRA), Building Owners & Managers Association (BOMA), or any other group that focuses on a single type of business.
- **Grandfathered Direct Access Customer;** Customers currently eligible for direct access regardless of size.
- **Green Choice Customers:** This option would be available to core customers wishing to purchase 100% of their their energy needs from providers of renewable energy. Up to 5% of a utility's residential load could choose this option each year.

The **Core group** would consist of:

- **Core customers:** Customers with demand below 200 kW); and
- **Core-elect customers:** Customers with demand above 200 kW who choose to remain with the utility.

Similar to Direct Access, non-core group customers would be allowed to purchase energy from an energy service provider while continuing to receive transmission and distribution services from the incumbent utility. Noncore group customers also have the option of receiving “auxiliary services” defined as “including metering, billing, and public service notifications” from either the utility or their energy service provider. Noncore group customers would remain “eligible to participate in any program (such as energy efficiency) funded through a non-bypassable charge.

Core group customers would receive bundled service from the utility.

In its report to the Legislature on Core/Noncore Market Structure, the Strategic Planning Division identified a number of issues that any such market structure needed to address. The following highlights how AB1704 would address these issues, and how this compares to current Commission policy.

Resource Adequacy

“Every customer in the non-core group that enters into a direct transaction would be responsible for procuring electricity sufficient to meet its needs and a standardized reserve margin established by the commission in consultation with the CEC and ISO.” This is consistent with Commission policy (established in D.04-01-050) that all load-serving entities (LSEs) both utility, ESP and Community Choice Aggregators (CCAs) meet resource adequacy standards.

Ability to Switch between bundled service and direct access

Under the legislation noncore group customers (other than green choice) can switch back to bundled service on less than 1 year’s notice (if they want to be put on the temporary service tariff) or on 1 year’s notice (if they want to go back to tariffed service.)

Core-elect customers can become non-core by giving the utility one year’s notice.

Current Commission policy is to require direct access customers returning to bundled service to provide 6-months notice and make a 3-year commitment (D.03-05-034). The Commission left open the possibility, in D.03-05-034, that a longer period might be necessary to minimize the effect of this switching on the utility’s existing customers.

Green choice customers can switch on 30-days notice.

Stranded Cost Recovery

Currently, direct access customers are responsible for a fair share of above-market DWR contract costs as well as continuing CTC obligations (almost entirely above market QF costs). Additionally, the Commission has stated that if the direct access market is re-opened, new direct access customers who are currently taking bundled service are responsible for their share of any costs or long-term commitments made on their behalf by the utility. In several decisions (D.04-06-011 – SDG&E RFP; D.03-12-059 – Edison Mountainview; and D.04-12-048 – Procurement), the Commission has stated that any new direct access customers would be responsible for any stranded costs for up to 10-years (in the case of fossil-fueled investments) and for the life of the contract in the case of renewable investments.

AB1704 would continue the requirement that non-core customers are responsible for their share of above-market DWR costs and on-going CTC obligations but is not clear on the obligation of new non-core customers to assume their share of utility-incurred obligations. **This section of the legislation needs to be clarified.**

If a non-core customer returns to bundled service, AB1704 would allow the utility to collect any additional costs incurred in providing service for this customer. However, AB1704 also appears to require that after one-year, a returning non-core customer is to be returned to the utility's existing tariffed rates. It is unclear how excess costs that exceed one-year in duration (for example as happened with the long-term DWR contracts) would be collected from returning non-core customers. **This section needs further clarification.**

Green-choice customers are also responsible for any stranded costs they incur, yet the 30-day switching requirement contained in AB1704 for these customers may create administrative problems for the Commission in determining the appropriate stranded cost depending upon when the customer leaves the system.

Assumption of DWR Contract Obligations

As an alternative to paying for their share of above-market DWR costs, AB1704 appears to allow noncore customers to assume their proportionate share of the costs and output of the DWR contracts.

As currently written however, the language appears to allow that noncore customers could receive the full value of the DWR contract by only paying for the above-market

portion of the contract, not its full value.¹ SB641 contains a similar proposal, as well as implementing language that is clearer and accurately reflects the intent of the legislation.

Additionally, while there is a certain degree of equity and fairness in allowing noncore customers to receive a proportionate share of the total cost and output of the DWR contracts, actual implementation of this proposal raises a number of difficulties.

The CRS, for example, is based not only on the above market cost of DWR contracts but also includes on-going CTC costs (primarily above-market QF costs) as well as the offsetting benefits of below-market utility-retained generation (such as hydro). Thus, there is not a direct nexus between CRS payments and DWR contract obligations.

It is also operationally difficult to allocate DWR contracts to specific customers. The DWR contracts vary both as to type (i.e. baseload, load-following, peaking) as well as by contractual terms (i.e. must-take, dispatchable, fixed or variable price).² There is also a mismatch between when DWR power is delivered (in many cases under 24-hour around the clock contracts) and when non-core customers are likely to need power (primarily Monday-Friday during business hours). Under current conditions, for instance, the utilities are already having to sell excess DWR power during some hours of the day. It is unclear if non-core customers would have to assume this obligation as part of their assumption of their proportion of the DWR contracts.

Renewable Energy Development / Relation of “Green Choice” to RPS standard

AB1704 would create a “green choice” program for core customers to choose to receive 100% of their power from renewable sources. AB1704 envisions that both the utility and energy service providers could offer these programs.

It is not clear from the legislation if the green choice program is supposed to be a part of the RPS program or a supplement to it. If the Commission or some other entity creates a tradable renewable energy credit (REC) program, then sales by non-utility green choice providers could count toward each load-serving entity’s RPS requirements. If a REC program is not developed, implementation of a green choice program could make it more difficult for existing utilities and ESPs to meet their RPS goals.

¹ As written, for example, if the market cost of electricity is 4 cents, and the DWR contract cost is 6.7 cents, then a non-core customer who pays just the above-market portion of the contract (2.7 cents) is entitled to the output of the DWR contract which has a market value of 4 cents. SB641 allows for a noncore customer to either independently procure power and pay the applicable above-market DWR costs, or assume the full output and price of the DWR contract.

² The legislation would appear to allow green choice customers to receive a proportionate share of DWR contract energy despite the fact that almost all DWR energy is not from renewable energy sources.

Additionally, it may be difficult for “green choice” providers to develop given that they would also be subject to the resource adequacy rules contained in the legislation. Each green choice provider would have to develop a resource portfolio that not only is 100% renewable but also meets the reliability standards required for resource adequacy determinations. This may be difficult for many renewable energy technologies (i.e. solar and wind).

In order to ensure that **new** renewable resources are built, the legislation requires that by 2010 20% of the energy sold by green choice providers must be from new generation (constructed after January, 2005). However, there are no interim benchmarks between 2005 and 2010, thus companies could presumably sell renewable energy up until 2010 solely from existing sources.

Green choice providers may also have a difficult time arranging project financing for new renewable energy projects if customers are only required to give 30-days notice (as required by the legislation) to switch between the utility and the green choice provider. Non-utility green choice providers would have no guarantee of cost recovery if customers no longer take service from them.

Temporary Service Tariff/Provider of Last Resort (POLR)

Any direct access market structure needs clearly defined rules as to who will be the provider of last resort.

AB1704 would assign this role initially to the utilities, which would create a “temporary service tariff”. This tariff would offer service at the higher of the utility’s tariffed rates or the actual cost of procuring energy.

This temporary service tariff would be available to;

- Core-elect customers who don’t make a determination
- Non-core customers returning to bundled service on less than 1 year’s notice;
- A “safe harbor” for Non-core customers to temporarily take service from the utility if their ESP goes out of business or the customer is transitioning between ESPs

AB1704 would also require that the Commission report to the Legislature by December 31, 2006, with recommendations for a system to provide default service that could include having a third-party (other than the utility) provide this service.

Modifications to AB57 Procurement Obligations

Currently, AB57 requires the utilities to procure sufficient energy to meet the needs of all of their existing customers. AB1704 would modify this requirement and require that

the utilities only acquire energy sufficient to meet the expected needs of their core and core-elect customers.

While the Commission has supported this concept in theory³, in reality it may be difficult to achieve this goal. As noted in the Core/Noncore market structure report, the utilities had already acquired through 2010 over 90% of their energy needs for their entire existing customer base just through their existing generation and DWR contracts. Therefore, the utilities have only a very limited ability to adjust their portfolios to reflect departing load.

This flexibility has been further limited by the Commission's and the Administration's goals of having the utilities meet their resource adequacy requirement by 2006, as well as by requirements to ensure local reliability and meet RPS goals. As noted in the procurement decision, the adopted procurement plans for both Edison and SDG&E assume no departing load. Attempting to adjust utilities' forecasts to reflect the potential for departing load could affect short-term reliability and achievement of RPS goals.

Certainty of Load for Making Long-Term Investments

Any core/noncore market structure needs to provide a reasonable degree of certainty as to how much load the utility is responsible for acquiring resources to meet. Given the long lead-time to bring new resources on line, as well as the long-life of new resources, investment decisions require some degree of certainty over a long-time period.

As written AB1704 provides a great degree of flexibility in the ability of load to switch between core and non-core service. The ability of both individual customers with multiple sites (such as McDonald's) as well as the ability of different customers to aggregate under "common types of ownership" (such as the California Restaurant Association) essentially means that any commercial customers, as well as large multi-unit residential customers are eligible for noncore status. Thus the potential size of the noncore market is potentially very large while the number of customers who may actually choose to switch is unknown. This uncertainty could significantly affect the willingness of investors to plan and make long-term investment decisions for new power plants.

Community Choice Aggregation

Currently, customers are allowed to "opt-out" of a CCA proposal and continue to receive bundled service from the utility. Consistent with re-instating direct access, this

³ See for example D.04-12-048

legislation would now allow eligible non-core customers to opt-out of a CCA proposal and choose to take service either from the utility *or from an energy service provider*.

Substitution of “electricity” for “electric power”

The proposed legislation makes numerous changes throughout the PU Code of substituting the term “electricity” in place of the current terms “power” or “electric power”. Legal Division should examine if this change is merely a semantic change or if it creates potential unintended consequences.

Deleting extraneous language and modifying PU Sec. 365

PU Code Sec. 365, added to the code as part of AB1890, currently requires that the Commission take all steps necessary to create a functioning ISO, an action that the Commission has already accomplished. AB1704 would delete this extraneous language. In its place it would state the Legislature’s intent that the Commission take necessary steps to: 1) transition the electrical market to a core/noncore model and 2) preserve the ability of grandfathered direct access customer to continue to utilize direct access.

RECOMMENDED AMENDMENTS: N/A

The analysis points out several areas that need to be clarified. They are:

1. Clarification on how new non-core customers would assume their share of utility-incurred obligations.
2. Clarification on excess costs incurred by utilities to serve non core customers that return to bundled service that exceed one year in duration would be collected from returning non-core customers.

We would recommend working with the author and the sponsors to seek amendments to clarify these issues.

LEGISLATIVE HISTORY:

In the last session, Assemblyman Richman had a similar bill to re-open the electric market to competition (AB428). Assembly Speaker Nunez also had a bill that would have created a core/noncore market structure, AB2006. AB2006 was passed by the Legislature and vetoed by Governor Schwarzenegger. In his veto message, the Governor stated his support for a core/non-core market structure but disagreed with numerous other provisions in AB2006.

STATUS:

Assigned to Assembly Utilities & Commerce Committee – no hearing date set.

SUPPORT/OPPOSITION:

Support: Schwarzenegger Administration (sponsor)

Opposition: unknown

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BILL LANGUAGE:

BILL NUMBER: AB 1704 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Richman

FEBRUARY 22, 2005

An act to amend Sections 216, 331, 365, 366, 366.2, and 454.5 of, to add Sections 399.20 and 9609 to, to add Article 17 (commencing with Section 400) to Chapter 2.3 of Part 1 of Division 1 of, and to repeal Section 454.5 of, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1704, as introduced, Richman. Electricity: electrical restructuring: core, noncore, and core-elect electrical market structure.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. The existing Public Utilities Act requires the commission pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, existing law also suspends the right of retail end-use customers, other than community choice aggregators, as defined, to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would require the commission to adopt rules meeting specified requirements, to transition to a core/noncore electrical market structure. Under the core/noncore market structure, an electrical corporation would have a duty to provide core customers and core-elect customers, as defined, with electricity, transmission service, distribution service, and auxiliary services, including metering, billing, and public service notifications (bundled service), and would have a duty to provide noncore customers, aggregated noncore customers, grandfathered direct access customers, and green-choice customers, as defined, with transmission service and distribution service on a nondiscriminatory basis. Every noncore, aggregated noncore, grandfathered direct access, and green-choice customer that enters into a direct transaction would be responsible for procuring electricity sufficient to meet its needs and a standardized reserve margin established by the commission in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and the Independent System Operator (ISO). This bill would delete the requirement that direct transactions be suspended until the Department of Water Resources no longer supplies electricity through power purchase contracts, and would instead authorize noncore, aggregated noncore, and green-choice customers to enter into direct transactions pursuant to the

core/noncore electrical market structure. The bill would make other conforming changes.

(2) Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, including the requirement that the procurement plan enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

This bill would instead require that the procurement plan approved by the commission enable the electrical corporation to fulfill its obligation to serve its core customers and core-elect customers, at just and reasonable rates, while minimizing the risk of stranded electricity procurement costs that could result from customers electing to enter into direct transactions pursuant to the core/noncore electrical market structure.

(3) Existing law states the intent of the Legislature that each retail end-use customer that has purchased electricity from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of January 1, 2003, that are recoverable from electrical corporation customers in commission-approved rates. Existing law states the further intent of the Legislature to prevent any shifting of recoverable costs between customers.

This bill would provide that noncore, aggregated noncore, and green-choice customers are responsible for a fair share of the cost of contracts entered into by the Department of Water Resources and that when a noncore, aggregated noncore, or green-choice customer receives electricity through a direct transaction that is assessed a cost responsibility surcharge that includes ongoing expenses for electricity purchased under long-term contracts entered into by the Department of Water Resources, the customer is entitled to receive the electricity the customer is paying for, or the customer or the customer's electric service provider may apply the electricity to a reserve margin for the customer's load.

(4) Existing law, in implementation of electrical restructuring, requires that the governing board of a local publicly owned electric utility, as defined, determine whether the utility will authorize direct transactions between electricity suppliers and end-use customers.

This bill would require that when a local publicly owned electric utility expands service into a geographical service area of an electrical corporation, any noncore, aggregated noncore, green-choice, or grandfathered direct access customer within that service area receiving electricity through a direct transaction has the right to engage in direct transactions.

(5) Under existing law, a violation of the Public Utilities Act or an order or other action of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain of the provisions. Because a violation of the bill's provisions or of an order or action of the commission implementing those provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(6)

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 216 of the Public Utilities Code is amended to read:

216. (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof. (b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(d) Ownership or operation of a facility that employs cogeneration technology or produces ~~power~~ *electricity* from other than a conventional ~~power~~ *electricity* source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning

of this section solely because of that ownership, operation, or sale.

(g) Ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (Chapter 2C (commencing with Section 79) of Title 15 of the United States Code) does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, ~~sales into the Power Exchange referred to in Section 365~~ and Article 17 (commencing with Section 400) , or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

SEC. 2. Section 331 of the Public Utilities Code is amended to read:

331. The definitions set forth in this section shall govern the construction of this chapter. (a) "Aggregator" means any marketer, broker, public agency, city, county, or special district, that combines the loads of multiple end-use customers in facilitating the sale and purchase of ~~electric energy~~ electricity , transmission, and other services on behalf of these customers.

(b) "Broker" means an entity that arranges the sale and purchase of ~~electric energy~~ electricity , transmission, and other services between buyers and sellers, but does not take title to any of the ~~power~~ electricity sold.

(c) "Direct transaction" means a contract between any one or more electric generators, marketers, or brokers of ~~electric power~~ electricity and one or more ~~retail~~ noncore, aggregated noncore, green-choice, or grandfathered direct access customers providing for the purchase and sale of ~~electric power~~ electricity or any ancillary services , pursuant to Article 17 (commencing with Section 400) .

(d) "Fire wall" means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) "Marketer" means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) "Microcogeneration facility" means a cogeneration facility of less than one megawatt.

(g) "Restructuring trusts" means the two tax-exempt public benefit trusts established by Decision 96-08-038 of the Public Utilities Commission to provide for design and development of the hardware and software systems for the Power Exchange and the Independent System Operator, respectively, and that may undertake other activities, as needed, as ordered by the commission.

(h) "Small commercial customer" means a customer that has a maximum peak demand of less than 20 kilowatts.

SEC. 3. Section 365 of the Public Utilities Code is amended to read:

365. ~~The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330. In addition, the commission shall do all of the following:~~(a) ~~Facilitate the efforts of the state's electrical corporations to develop and obtain authorization from the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the commission, and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The commission shall also participate~~
Participate fully in all proceedings before the Federal Energy Regulatory Commission in connection with the Independent System Operator and ~~the independent Power Exchange, and shall~~ encourage the Federal Energy Regulatory Commission to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, encourage all publicly owned utilities in California to become full participants, and maximize enforceability of such protocols and procedures by all market participants.

~~—(b) (1) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in subdivision (a). The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any phase in of customer eligibility for direct transactions ordered by the commission shall be equitable to all customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.—~~

~~—(2) Customers shall be eligible for direct access irrespective of any direct access phase in implemented pursuant to this section if at least one half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.—~~

(b) (1) Transition the electrical market to a core/noncore model, consistent with Article 17 (commencing with Section 400).

(2) Take any action necessary to preserve the ability of a grandfathered direct access customer to continue to receive electricity through a direct transaction. A grandfathered direct access customer shall have all the rights and obligations of a noncore customer under Article 17 (commencing with Section 400).

SEC. 4. Section 366 of the Public Utilities Code is amended to read:

366. ~~—(a)—~~ — The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers *consistent with a core/noncore market structure, pursuant to Article 17 (commencing with Section 400)* . ~~Customers shall be entitled to aggregate their electrical loads on a voluntary basis,~~

~~provided that each customer does so by a positive written declaration.— If no positive declaration is made by a noncore customer to obtain electricity from an electric service provider , that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2. (b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.—~~

SEC. 5. Section 366.2 of the Public Utilities Code is amended to read:

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice program available, that customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest. *If a noncore customer, aggregated noncore customer, grandfathered direct access customer, or green-choice customer opts out of a community choice aggregator's program, the customer may elect to purchase electricity from an electric service provider pursuant to Article 17 (commencing with Section 400).*

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) ~~Notwithstanding Section 366, a~~ A community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The

implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

- (A) An organizational structure of the program, its operations, and its funding.
- (B) Ratesetting and other costs to participants.
- (C) Provisions for disclosure and due process in setting rates and allocating costs among participants.
- (D) The methods for entering and terminating agreements with other entities.
- (E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.
- (F) Termination of the program.
- (G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

- (A) Universal access.
- (B) Reliability.
- (C) Equitable treatment of all classes of customers.
- (D) Any requirements established by state law or by the commission concerning aggregated service.
- (5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (d), (e), and (f) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (d), (e), and (f).
- (6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed, within 10 days of the filing.
- (7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).
- (8) No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost-recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.

(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) (A) A city, county, or city and county that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter shall do so by ordinance.

(B) Two or more cities, counties, or cities and counties may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A).

(11) Following adoption of aggregation through the ordinance described in paragraph (10), the program shall allow any retail customer to opt out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

(12) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.

(13) (A) The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any

notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the community choice aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the community choice aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.

(14) The community choice aggregator shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

(15) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

(16) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

(17) An electrical corporation shall recover from the community choice aggregator any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

(18) At the request and expense of any community choice aggregator, electrical corporations shall install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community aggregator at the aggregator's expense. To the extent that the community aggregator requests a metering location that would require alteration or modification of a

circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be born by the community aggregator.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased ~~power~~ *electricity* from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with Section 80000) of the Water Code and Section 360.5, and is therefore declaratory of existing law.

(e) A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the

electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

(h) Notwithstanding Section 80110 of the Water Code, the commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (g). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section 80110 of the Water Code.

(i) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

(2) The commission shall not authorize community choice aggregation until it submits a report certifying compliance with paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(3) The commission shall not authorize community choice aggregation until it has adopted rules for implementing community choice aggregation.

(j) The commission shall prepare and submit to the Legislature, on or before January 1, 2006, a report regarding the number of community choice aggregations, the number of customers served by community choice aggregations, third party suppliers to community choice aggregations, compliance with this section, and the overall effectiveness of community choice aggregation programs.

SEC. 6. Section 399.20 is added to the Public Utilities Code , to read:

399.20. A retail seller shall have a separate and divisible renewables portfolio standard for green-choice customers, as defined in Section 400, and for all other customers that are not green-choice customers. The minimum quantity requirements for procurement of electricity from eligible renewable energy resources established under this article apply separately to the group of customers that are green-choice customers and to the group of customers that are not green-choice customers.

SEC. 7. Article 17 (commencing with Section 400) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code , to read:

Article 17. Core/Noncore Electrical Market Structure

400. As used in this article, the following terms have the following meanings:(a) "Aggregated noncore customer" means a customer under common ownership with multiple locations within the service area of a single electrical corporation, with an aggregated load of in excess of 200 kilowatts or more. "Aggregated noncore customer" also means a customer of a common type that is separately owned, with multiple locations within the service area of a single electrical corporation, that has a common agent for the procurement of electricity, and has an aggregated load of 200 kilowatts or more.

(b) "Bundled service" means electricity commodity service, transmission service, distribution service, and auxiliary services, including metering, billing, and public service notifications, provided by an electrical corporation at a commission approved rate.

(c) "Core customer" means a retail end-use consumer of electricity within the service territory of an electrical corporation with a maximum aggregate peak demand of less than 200 kilowatts.

(d) "Core-elect customer" means a retail end-use consumer of electricity within the service territory of an electrical corporation with a maximum aggregate peak demand of 200 kilowatts or more, that has not elected to purchase electricity from an electric service provider.

(e) "Grandfathered direct access core customer" means a core customer that received electricity through a direct transaction that was not suspended by the commission after September 20, 2001, pursuant to Section 80110 of the Water Code.

(f) "Green-choice customer" means a retail end-use consumer of electricity within the service territory of an electrical corporation with a maximum aggregate peak demand of less than 200 kilowatts, that elects to receive electricity that is generated entirely from an eligible renewable energy resource, as defined in Section 399.12. By December 31, 2010, at least 20 percent of the electricity sold by a retail seller to green-choice customers shall be generated from eligible renewable energy resources that commence operation after January 1, 2005.

(g) "Noncore customer" means a retail end-use consumer of electricity within the service territory of an electrical corporation with a maximum aggregate peak demand of 200 kilowatts or more, that has elected to procure electricity through a direct transaction. A customer with a master meter, that has a maximum peak demand of 200 kilowatts or more is a "noncore customer" without regard to the existence of submeters with a maximum peak demand of less than 200 kilowatts.

400.1. The commission shall establish rules for the orderly transition to a core/noncore electrical market structure that accomplish all of the following: (a) An electrical corporation shall have a duty to provide core customers and core-elect customers with bundled service. Every green-choice customer, noncore customer, aggregated noncore customer, and grandfathered direct access core customer, shall be responsible for procuring electricity sufficient to meet its needs and a standardized reserve margin to be established by the commission, in consultation with the State Energy Resources Conservation and Development Commission and the Independent System Operator.

(b) A core-elect customer may, upon providing the electrical corporation with at least one year's notice, enter into a direct transaction. Core-elect customers that do not affirmatively elect to receive bundled service from the electrical corporation by October 15, 2006, shall receive bundled service from the electrical corporation beginning March 15, 2007, pursuant to a temporary service tariff. The temporary service tariff shall reflect the electrical corporation's actual cost differences to procure electricity to meet anticipated demand and commission approved reserve levels, for the one-year period that the electrical corporation is obligated to supply electricity to core-elect customers that do not affirmatively elect to receive service from either an electric service provider or the electrical corporation. The cost of electricity under the temporary service tariff shall not be less than the averaged cost for

electricity incurred by the electrical corporation pursuant to its procurement plan approved by the commission pursuant to Section 454.5.

(c) Core-elect customers that affirmatively elect to receive bundled service from the electrical corporation shall receive bundled service at the regular tariff rate. The commission may adopt rules or orders that authorize a core-elect customer to affirmatively elect to receive bundled service for a specified period of time at rates that reflect the electrical corporation's reasonable cost of procuring electricity for that time period. The commission may adopt rules or orders that permit a core-elect customer that affirmatively elects to receive bundled service to thereafter elect to enter into a direct transaction, provided that the later election to procure electricity through a direct transaction does not result in unrecovered stranded electricity purchase costs for the electrical utility.

(d) A noncore customer that has elected to contract to receive electricity from an electric service provider may thereafter affirmatively elect to receive bundled service from the electrical corporation. A noncore customer that contracts to purchase electricity from an electric service provider that thereafter affirmatively elects to receive bundled service from the electrical corporation, shall not receive bundled service from the electrical corporation at regular tariff rates until one year after providing notice of the election to return to bundled service or upon the electrical corporation's affirmative agreement to serve the noncore customer. An electrical corporation's agreement to serve the noncore customer shall not result in any costs being shifted to core customers. A noncore customer that contracts to purchase electricity from an electric service provider that thereafter affirmatively elects to receive bundled service from the electrical corporation, may receive bundled service with less than one year's notice upon the expiration of its contract with the electric service provider, and without the affirmative agreement of the electrical corporation, under the temporary service tariff.

(e) Up to 5 percent of an electrical corporation's residential and small commercial load may, on a first-come basis, elect to become green-choice customers. A customer may elect to become a green-choice customer upon providing the electrical corporation with at least 30 days' notice before receiving electricity from an electric service provider that is generated entirely from an eligible renewable energy resource, as defined in Section 399.12. A green-choice customer may elect to return to bundled service from the electrical corporation upon providing the electrical corporation with at least 30 days' notice. An electrical corporation may offer customers the option of receiving electricity that is generated entirely from an eligible renewable energy resource, as defined in Section 399.12, pursuant to a program authorized by the commission.

(f) An electrical corporation shall have a duty to provide green-choice customers, noncore customers, aggregated noncore customers, and grandfathered direct access core customers with transmission service and distribution service. The electrical corporation shall not discriminate between core customers, core-elect customers, green-choice customers, noncore customers, aggregated noncore customers, and grandfathered direct access core customers as to rates, charges, or service within class, with respect to transmission and distribution service.

(g) A green-choice customer, noncore customer, aggregated noncore customer, and a grandfathered direct access core customer shall

receive auxiliary services from the electrical corporation unless the customer notifies the electrical corporation that it has contracted for those services to be supplied by an electric service provider. Rates and charges for auxiliary services performed by electrical corporations for green-choice customers, noncore customers, aggregated noncore customers, and grandfathered direct access core customers shall remain subject to regulation by the commission. All customers, including green-choice customers, noncore customers, aggregated noncore customers, and a grandfathered direct access core customers, shall be eligible to participate in any program funded through a nonbypassable element of local distribution service pursuant to Article 7 (commencing with Section 381) or Article 15 (commencing with Section 399).

(h) The commission shall open an investigation or other appropriate proceeding to develop a system for the provision of default electrical service for noncore customers, aggregated noncore customers, and grandfathered direct access core customers that no longer receive electricity from an electric service provider, including when an electric service provider goes out of business and when the contract with an electric service provider terminates and the customer has not begun to receive electricity under a replacement direct transaction. The commission shall report to the Legislature by December 31, 2006, with recommendations for a system to provide default service. It is the intent of the Legislature that any system to provide default service be open and competitive and that purchases of electricity be for periods of time determined by the commission to produce optimal results for reliability and price, while affording noncore customers, aggregated noncore customers, and grandfathered direct access core customers opportunities to purchase their electricity supply through a direct transaction without stranded costs. The system for the provision of default electrical service may aggregate electricity demand by geographical area to account for transmission capabilities.

(i) Until the commission develops, and the Legislature adopts, a system for the provision of default electrical service for noncore customers, aggregated noncore customers, and grandfathered direct access core customers, those customers returning to electrical service by the electrical corporation shall receive service under the temporary service tariff. Noncore customers, aggregated noncore customers, and grandfathered direct access core customers returning to electrical service by the electrical corporation shall have up to six months to begin to receive electricity from a replacement electric service provider and shall provide at least 30 days' notice to the electrical corporation before receiving electricity from a replacement electric service provider. Noncore customers, aggregated noncore customers, and grandfathered direct access core customers returning to electrical service by the electrical corporation that fail to begin to receive electricity from a replacement electric service provider within six months, shall become core-elect customers.

(j) Noncore customers, aggregated noncore customers, and green-choice customers, shall be responsible for a fair share of the cost of contracts entered into by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code, in an amount to be determined by the commission. A noncore customer, aggregated noncore customer, or grandfathered direct access core customer that receives electricity through a direct transaction that is assessed a cost responsibility surcharge that includes ongoing expenses for electricity purchased under long-term contracts

entered into by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code, shall be entitled to receive the electricity the customer is paying for, or the customer or the customer's electric service provider may apply the electricity to a reserve margin for the customer's load.

400.2. The commission shall approve any form employed by an electrical corporation for a noncore customer to affirmatively elect to receive electricity and auxiliary services from the electrical corporation as a core-elect customer.

400.3. The commission shall, by rulemaking or other appropriate procedure, ensure the avoidance of cross subsidies by an electrical company between different duties of service, including rules that prevent an electrical corporation from allocating costs to transmission and distribution services that should be allocated to electricity and generation resources.

400.4. The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall develop and implement mechanisms to verify that green-choice customers receive electricity generated entirely from eligible renewable energy resources, as defined in Section 399.

SEC. 8. Section 454.5 of the Public Utilities Code, as added by Section 3 of Chapter 850 of the Statutes of 2002, is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section. (b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other

parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Section 399.6, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that

limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its *core and core-elect* customers , as defined in Section 400, at just and reasonable rates , while minimizing the risk of stranded electricity procurement costs that could result from customers electing to enter into direct transactions pursuant to Article 17 (commencing with Section 400)

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement

plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 9. Section 454.5 of the Public Utilities Code, as added by Section 2 of Chapter 835 of the Statutes of 2002, is repealed.

~~454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of~~

~~electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 90 days before the electrical corporation resumes procurement pursuant to this section.(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:~~

~~—(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity related products and the remaining open position to be served by spot market transactions.~~

~~—(2) A definition of each electricity product, electricity related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.~~

~~—(3) The duration of the plan.~~

~~—(4) The duration, timing, and range of quantities of each product to be procured.~~

~~—(5) A competitive procurement process under which the electrical corporation may request bids for procurement related services, including the format and criteria of that procurement process.~~

~~—(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.~~

~~—(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.~~

~~—(8) Procedures for updating the procurement plan.~~

~~—(9) A showing that the procurement plan will achieve the following:~~

~~—(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Section 399.6, to cover the above market costs for new renewable energy resources.~~

~~—(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short term and long term electricity and electricity related and demand reductions products.~~

~~—(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.~~

~~—(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.~~

~~—(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.~~

~~—(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:~~

~~—(1) A competitive procurement process under which the electrical corporation may request bids for procurement related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission authorized process shall be recovered in the generation component of rates.~~

~~—(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.~~

~~—(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.~~

~~—(d) A procurement plan approved by the commission shall accomplish each of the following objectives:~~

~~—(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.~~

~~—(2) Eliminate the need for after the fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.~~

~~—(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to~~

~~an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.~~

~~— (4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity related product contracts.~~

~~— (5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.~~

~~— (c) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.~~

~~— (f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.~~

~~— (g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.~~

~~— (h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.~~

~~— (i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.~~

~~— (j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the~~

~~effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.~~

~~(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.~~

~~(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.~~

SEC. 10. Section 9609 is added to the Public Utilities Code , to read:

9609. When a local publicly owned electric utility expands service into a geographical service area of an electrical corporation, any noncore customer, aggregated noncore customer, grandfathered direct access customer, or green-choice customer within that service area receiving electricity through a direct transaction pursuant to Article 17 (commencing with Section 400), shall have the right to engage in direct transactions.

SEC. 11. Section 80110 of the Water Code is amended to read:

80110. The department shall retain title to all ~~power~~ electricity sold by it to the retail ~~end-use~~ end-use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.

~~Such~~ The revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the Public ~~Utility~~

~~Utilities~~ Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission. ~~In no case shall the commission~~

~~The commission shall not~~ increase the electricity charges in effect on ~~the date that the act that adds this section becomes effective~~ February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of ~~power~~ electricity it has procured for

the electrical corporation's retail ~~end-use~~ end-use customers as provided in this division. After the passage of ~~such~~ a period of time after ~~the effective date of this section~~ February 1, 2001, as shall be determined by the commission, the right of retail ~~end-use~~ end-use customers

pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended ~~until the department no longer supplies power hereunder~~ . On and after March 15, 2007, the acquisition of electricity from electric service providers shall be in accordance with Article 17 (commencing with Section 400) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. The department shall have the same rights with respect to the payment by retail ~~end-use~~ ~~end-use~~ customers for ~~power~~ electricity sold by the department as do providers of ~~power~~ electricity to ~~such~~ those customers.

SEC. 12.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.